

CANADA INFRASTRUCTURE BANK

Addressing the Indigenous Water Crisis through Public-Private Partnerships (P3s)

Issue Statement: How can the Canada Infrastructure Bank use P3s to address the Indigenous water crisis?

Background:

- First Nations living on reserves in Canada continue to face inadequate access to clean drinking water and sanitation, despite being one of the most water-rich countries in the world.
- The infrastructure deficit across First Nations reserves in Canada is between \$25 and \$30 billion; the water and wastewater treatment infrastructure deficit for First Nations communities across Ontario alone is \$2 billion ([source](#)).
- The federal government is responsible for providing funding and advice for water systems on First Nations reserves, south of the 60th parallel, which includes design, planning, upgrading, construction, and procurement. Access to safe drinking water is a shared responsibility through a tri-department federal structure, including Indigenous Services Canada, Health Canada and Environment and Climate Change Canada ([source](#)).
- Despite repeated commitments from the federal government to ensure all First Nations reserves have access to clean water, as of January 2022, there continue to be 36 long-term drinking water advisories in effect in 29 First Nations communities ([source](#)). Moreover, these figures do not include First Nations on decentralised water systems, signalling that the crisis is even larger than federally reported numbers suggest.
- The creation of Public Private Partnerships (P3s) for water infrastructure systems have been recently touted as a solution to address the Indigenous water crisis in Canada.
- P3s are an increasingly popular alternative model to developing public infrastructure through a long-term partnership between governments and the private sector whereby the private partner delivers and funds public services using a capital asset, sharing the associated risks ([source](#)).
- To establish the appropriate conditions for P3s in Canada, the federal government created a crown corporation called Canada Infrastructure Bank (CIB) in 2017 as an agency working to attract private investment into public infrastructure projects ([source](#)).
- Infrastructure Canada predicts that there are approximately 250 P3 projects underway across the country. A total of seven water infrastructure projects have been funded through the P3 Canada Fund by the federal government and two P3 projects connected to benefiting Indigenous communities ([source](#)).

Key Considerations:

Strengths

- **P3s increase local employment:** P3s can stimulate economic activity and employ local residents. Between 2003 and 2012, P3s in Canada created 291,000 direct jobs, \$9 billion in total income and wages, and \$92.1 billion in total economic output ([source](#)). More importantly, when indigenous employees are involved, it not only enhances the business, design and engineering process but also improves maintenance of the infrastructure, and allows for more consultative decision-making.

- Staying on budget and construction schedule: P3s can incentivize innovation and financial efficiency by fostering competition amongst developers ([source](#)). Since private lenders in P3s do not get paid until the project is complete, this can also incentivize projects to be completed on budget and time. The Okanagan Correctional Centre is an example of a P3 project aimed to further increase the benefits of competition through following the Design Build Finance Maintain (DBFM) model over the traditional Design Bid Build (DBB) ([source](#)).
- Supportive of Indigenous water governance: P3s emphasise an integrated approach that could ensure that First Nations are decision-makers in the P3 process, unlike the traditional approach to infrastructure, which often leaves First Nations out of the decision-making process. An example of a successful Indigenous P3 relationship is the Kokish River Hydroelectric Project in British Columbia ([source](#)).
- Meet the growing need for infrastructure development in the context of limited public sector resources: Demand for critical infrastructure in Canada and around the world has been increasing rapidly, yet government resources are limited and this is where P3s have led the way (World Bank, 2020). By employing P3s, governments can meet the demand for critical water infrastructure through funding from the private sector while holding space for First Nations to exercise authority over infrastructure planning and decision-making.

Weaknesses

- Risk in the rising cost of water: Critics argue that P3's are profit driven, raise water costs, and have poor performance. The city of Moncton entered into a P3 for their water filtration system. However, water rates increased by 75% in the first 2 years after the contract was awarded to US Filter and Moncton's water prices continue to be significantly higher than the national average ([source](#)).
- Lack of evidence-based research and transparency on P3 success: P3s are a relatively new mode of financing public infrastructure, limiting the number of projects that can be analysed. There are only two P3 projects in Canada that involve Indigenous communities and none regarding water infrastructure on reserves. Finally, given the privacy of legal contracts and lack of data on the progress for P3 projects, it is hard to find evidence-based sources on the benefits of P3s. A majority of P3 contracts are confidential and information on them is unavailable to the public. Even where judicial interventions were sought by activist groups around the world, any documents received were heavily redacted ([source](#)).
- Complexity of P3 contracts: The success of P3 projects depends on what is included in the contract. It can be challenging for Indigenous communities to strategize on how to negotiate and be counted in as a stakeholder without understanding what the contract outlines. Even among experts in water treatment and government, there are wide knowledge gaps in the procurement, legal, financial, and technical aspects of P3s.
- P3s contracts may also not ensure long-term maintenance of water infrastructure: Indigenous water governance has failed historically due to poor maintenance of infrastructure of which P3s may not always ensure.

Opportunities

- Potential to improve water infrastructure for Indigenous communities in a timely manner: In alignment with Canada's constitutional responsibility to provide adequate water access to

Indigenous communities, P3s can be utilised to attract private sector funds to support Indigenous communities.

- *Foster innovation in water governance techniques:* As governments around the world start to increasingly adopt P3s in various sectors, proper management and accountability could lead to innovations in the field of water governance, providing a long-term solution to the Indigenous water crisis. Likewise, research and development can allow for process innovation along with the improvement of construction techniques.

Threats

- *Lack of consultation and poor maintenance of Indigenous water infrastructure:* The P3 model does not guarantee that Project Co's, private lenders, or the government will consult and engage actively with Indigenous communities.
- *Donor-driven:* Even where there is some Indigenous consultation, P3 funding is often provided by private sector donors who might sometimes define the priorities of the project, and civil society groups have often expressed this concern, arguing that P3s amount to privatisation ([source](#)).
- *Weakening stakeholder engagement and consultation with Indigenous communities:* Project Cos have no required obligation to collaborate with Indigenous communities in terms of hiring local labour and having an inclusive decision-making process. The focal priority of private lenders is also for the construction to be completed. Unless lenders see a significant risk in the water project taking extra time or even incompleteness, there is lack of concern for how Indigenous communities are consulted with. There may be a lack of collaboration and consultation on decision making for water governance projects through P3s.

Recommendations and Options: We present two recommendations to be considered for each of the three policy options.

Recommendation A: Assign a private legal and financial manager who assists Indigenous stakeholders to strategize within and understand P3 contract making processes, negotiation, and structures. This can be complimented with comprehensive and accessible toolkits to help negotiate through P3 contract writing processes.

Recommendation B: The federal government creates mandatory regulations requiring P3 have collaborative and inclusive decision-making processes with Indigenous stakeholders, especially for P3s projects addressing the Indigenous infrastructure deficit. Based on lessons learned from jurisdictional examples and organisations such as Plenary Group and EPCOR, recommendation B can be enforced by requiring selected Project Co's to have an outlined commitment to strengthen Indigenous relations or relevant certifications such as those provided by the Canadian Council for Aboriginal Business ([source](#)).

Policy Options

1) Conduct a P3 Pilot Study: We recommend that the CIB, in partnership with First Nations and the private sector, design and implement a P3 pilot study to better understand the implementation process of a P3 for a water system in a First Nation. The pilot project creates an opportunity to analyse the advantages and disadvantages, as well as its feasibility of DBB versus the DBFM model to address the Indigenous water crisis. **(RECOMMENDED)**

For this option, the CIB, the private partner, and the interested First Nation would collectively launch a P3 pilot project, utilising the DBFM model, over the course of five years. The DBFM P3 model has shown to increase the competitive process, as well as fuel innovative approaches to the development of infrastructure, as exemplified in the building of the Okanagan Correctional Centre ([source](#)). Before the launch of the pilot project, sufficient consultation and engagement with First Nations members about the water infrastructure project must occur, which is one of the project's key performance indicators, to ensure that community perspectives are included in the short-term and long-term design, placement, and management of the water system. The pilot project would study the implementation process of a P3 for a water system in a First Nation, the process of creating a contract that is accepted by all partners, the number of First Nations members employed by the project, and the quality and effectiveness of the infrastructure itself. One of the key performance indicators to be considered, is the true costs of P3s and whether they stay on budget, as well as their impact on the price of water, which is often flagged as a risk to the implementation of a P3 for a water system. Specifically, the pilot study would consider and evaluate the potential of rising costs of water to users under a P3 system. Beginning at one year after the implementation of the P3, a yearly analysis will be conducted by an evaluation committee, comprising of representatives from the CIB, the private partner, and First Nations members to assess The evaluative results and any other data collected during the pilot study should be kept protected and aligned with the First Nations principles of ownership, control, access and possession (OCAP Principles), as outlined by the First Nations Information Governance Committee ([source](#)).

Considerations: The success of P3 projects varies by contract, and their results often cannot be duplicated, as they are very context-specific. Nevertheless, due the lack of transparent and evidence-based research on the effects of P3s in the Canadian context, this policy option would be useful in outlining the best practices for potential future P3 water infrastructure projects for First Nations communities.

2) Maintain the Status Quo: Recommend to the CIB that more research by objective sources be conducted to better understand the potential gains and risks associated with the use of P3s to address the Indigenous infrastructure deficit.

Evidence for the efficacy of P3s to address the water crisis and support Indigenous water governance is mixed. This is in part due to the fact that government and private sector documents usually speak favourably of them, while a number of civil society groups have been critical of the use of P3s. As we have outlined, there is a dearth of objective research into the effectiveness of P3s in addressing water governance. As a result, given this option, maintaining the status quo might be the best course of action until more concrete evidence permits the scaling-up of P3s. To this end, we also recommend increased research into the ability of P3s to address the water crisis in Indigenous communities.

Considerations: In this option, more research by objective sources be conducted to better understand the potential gains and risks associated with the use of P3s to address the Indigenous infrastructure deficit. However, this policy option does not interfere with the P3s that already exist. Moving forward, we call on the CIB for increased transparency regarding all reports and analyses conducted regarding P3s and emphasise the need for increased research pathways into how P3s can be utilised to elevate and support Indigenous self-determination and decision-making.

3) Scale up the use of P3s: The P3 model is utilised by the CIB, private partners and First Nations communities to build water infrastructure on Indigenous reserves.

For this option, the federal government could create a Joint Working Group (JWG) including representatives from the federal government, private sector, and interested First Nations. Prior to implementation, a minimum number of hours could be set towards collaborating with Indigenous stakeholders on deciding what water infrastructure is needed. The P3 contract could then outline key performance indicators to maintain on a month-by-month that relate to collaboration with Indigenous stakeholders. Additionally, a mandatory annual check-in can occur to reflect on how relations between Indigenous and non-Indigenous stakeholders can be improved. The working group could also mitigate the risk of rising water costs associated with P3s.

Considerations: P3s offer an opportunity to accelerate the creation of water infrastructure for Indigenous communities. Inadequate access to safe, clean and reliable drinking water and sanitation is a human rights violation and a major hazard to health and hygiene that cannot be stalled any longer. Potential risks to be considered are related to the lack of past research on how P3s collaborate with First Nations communities and the rigidity of contracts that may act as a barrier to improve Indigenous water governance.

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